

Securities and Exchange Commission

§ 229.512

requirements regarding “Qualification of Accountants” which discusses disqualifying interests.

§ 229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.

In addition to the disclosure prescribed by Item 702 of Regulation S-K (§229.702), if the undertaking required by paragraph (h) of Item 512 of Regulation S-K (§229.512) is not required to be included in the registration statement because acceleration of the effective date of the registration statement is not being requested, and if waivers have not been obtained comparable to those specified in paragraph (h), a brief description of the indemnification provisions relating to directors, officers and controlling persons of the registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the registrant against such liabilities where a director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter) shall be included in the prospectus, together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

[47 FR 11401, Mar. 16, 1982, as amended at 56 FR 48103, Sept. 24, 1991]

§ 229.511 (Item 511) Other expenses of issuance and distribution.

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holder.

Instruction to Item 511: Insofar as practicable, registration fees, Federal taxes, States taxes and fees, trustees’ and transfer agents’ fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be itemized separately. Include as a separate item any premium paid by the registrant or any selling security holder on any policy obtained in connection with the offering and sale of the securities being registered which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of such securities. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, identified as such, shall be given.

§ 229.512 (Item 512) Undertakings.

Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 415 Offering.*¹ Include the following if the securities are registered pursuant to Rule 415 under the Securities Act (§230.415 of this chapter):

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration

¹Paragraph (a) reflects proposals made in Securities Act Release No. 6334 (Aug. 6, 1981).